

RESTRICTION REQUIREMENT

Claims 1-30, 33-55, and 59-62 are in the case and subject to a restriction requirement. Applicants hereby elect with traverse to prosecute the claims of Group II, including claims 9-30. Reconsideration is requested.

However, restriction is not required by 35 U.S.C. § 121, as suggested in the office action. Congress wisely granted the *discretion* to restrict applications. According to 35 U.S.C. § 121 "... the Commissioner *may* require the application to be restricted...." (emphasis added). Likewise, MPEP § 803 lists two criteria that must be present for restriction to be proper:

1. The invention must be independent or distinct; and
2. There must be a *serious burden* on the examiner if restriction is not required, *even if there are independent and distinct inventions present*.

In searching the claims of the elected group, the class and subclass for the claims of the other groups will undoubtedly be searched, to ensure that no relevant art is overlooked. Further, the examiner will undoubtedly use electronic search methods to find the prior art. Thus, even if the claims cover material that is found in separate classifications, there is no burden to search these separate classifications using electronic methods. Typically, the examiner will need to search multiple classifications anyway, to ensure that no relevant art is overlooked. In the present case, the search for the claims of the elected group is likely to result in finding art pertinent to the claims of the other groups, and vice versa.

In addition, the claims are all directed to art that is extremely related, and do not require searching classifications that are significantly different, one from another. For this reason there is no significant burden on the examiner, and certainly no serious burden as required by MPEP § 803, in keeping the claims together.

Further, in maintaining the restriction, the examiner is locking the Patent Office into the position that the groups of claims are patentable over each other, as provided by MPEP 802.01. Thus, if the restriction is maintained and different sets of claims are eventually allowed, the patents could not be cited against one another under either

statutory double-patenting or the judicially created doctrine of double-patenting, and no terminal disclaimer could be required. Taking such a definitive position should be carefully weighed before the restriction requirement is maintained for a mere matter of convenience.

In fact, maintaining the requirement for restriction not only burdens applicants with the additional costs associated with filing and prosecuting separate patent applications, but also requires the examiner to duplicate efforts by examining multiple applications of closely related inventions. Such practice not only wastes public and private funds and Patent Office resources, but also leads to the possibility of inconsistent examinations of closely related inventions. Accordingly, applicants respectfully request that the examiner reconsider and withdraw the restriction requirement.

In light of the foregoing, applicants respectfully submit that a full and complete response to the office action is provided herein, and request that the application proceed to examination.

AMENDMENTS

Applicants have amended many of the claims as given above so as to remove archaic language and resolve typographic and formatting inconsistencies.

CONCLUSION

In the event this response is not timely filed, applicants hereby petition for the appropriate extension of time. If any fees are required by this response, such fees may be charged to deposit account 12-2355.

Sincerely,

LUEDEKA, NEELY & GRAHAM, P.C.

By: 

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